

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATION

Regulation 1528. PHOTOGRAPHERS, PHOTOCOPIERS, PHOTO FINISHERS AND X-RAY LABORATORIES.

Reference: Sections 6006, 6009, 6015, and 6020, Revenue and Taxation Code

(a) PHOTOGRAPHERS AND PHOTOCOPIERS. Tax applies to sales of photographs, whether or not produced to the special order of the customer. Tax applies to sales of photocopies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photocopies out of materials furnished by the customer or others. Except as provided in subdivision (b)(2), no deduction is allowable on account of expenses such as travel time, telephone calls, rental of equipment, or salaries or wages paid to assistants or models, whether or not such expenses are itemized in billings to customers.

Tax does not apply to sales to photographers and persons who make photocopies of tangible personal property which becomes an ingredient or component part of photographs or photocopies sold, such as mounts, frames, sensitized paper, and toner but does apply to sales to the photographer or producer of materials used in the process of making the photographs or photocopies and not becoming an ingredient or component part thereof, such as chemicals, trays, films, plates, proof paper, cameras, and copy machine drums.

See Regulation 1540, *Advertising Agencies and Commercial Artists*, for transfers of photographic images by commercial artists.

(b) PHOTOCOPYING OF RECORDS.

(1) **GENERAL RULES.** Tax applies to sales of photocopies of records. Persons who make and sell, or obtain and sell, photocopies of records to consumers are retailers of the photocopies whether they make the photocopies themselves, hire a subcontractor to make the photocopies, or acquire the photocopies for resale from the person who owns or maintains the records. Tax applies whether or not the copies are made at the business location of the retailer or at the location of the person who owns or maintains the records. The tax applies to the entire charge for making and selling, or obtaining and selling, photocopies, without deduction for expenses incurred in obtaining access to the records, travel time, time spent in selecting the particular records desired, the field service of photocopying or microfilming the records, telephone calls, file setup charges, basic fees, typing fees, document handling fees, or any other costs or expenses of filling the customer's order.

(2) **SERVICE TRANSACTIONS.** Merely because a fee is charged in connection with the transfer of a photocopy of a record does not mean that the transaction is a sale transaction under the Sales and Use Tax Law. If a person who owns or maintains the records (recordholder) is required by law to furnish the photocopy upon tender and payment of a fee, the transfer of the photocopies by that person is not a sale. For sales and use tax purposes, that person is the consumer of the photocopies transferred and charges by a photocopy company to the recordholder for the photocopies are subject to tax.

(A) Medical Records. Ordinarily tax does not apply to charges made by a hospital or other health care provider (recordholder) for photocopying of medical records. The transaction is regarded as a service transaction, and the fees are nontaxable if the photocopies are furnished to the patient, or to someone acting on behalf of the patient, or to the patient's representative as provided in Health and Safety Code section 123110(b). Likewise, the fees are nontaxable if the photocopies are furnished in response to a written authorization presented by an attorney or the attorney's representative as provided in Evidence Code section 1158, or if the photocopies are furnished as provided in subdivision (b)(2)(C) below. Tax does apply, however, if the hospital or other health care provider is not required by law to furnish photocopies but otherwise sells photocopies of records for a price. Charges made by a photocopy company directly to the requesting party for photocopies which, by agreement with the recordholder, were made and furnished directly to the requesting party are taxable in their entirety.

The preparation and service of a written authorization as provided in California Evidence Code Section 1158 is a nontaxable service. The tax does not apply to separately stated charges for this service even though the written

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authorization is served in connection with the performance of a contract to produce and deliver photocopies of records.

(B) Public Records. Tax does not apply to charges made by a public agency for photocopies of records furnished pursuant to the California Public Records Act or local law, ordinance, or resolution. Persons who obtain photocopies of public records from public agencies and sell the photocopies are making retail sales and must pay sales tax measured by their entire charge, including reimbursement of legally required fees.

(C) Witness Fees. Copying, witness, mileage or other fees which are charged by a person who furnishes copies of records in response to a subpoena as provided in California Evidence Code Section 1563 are not subject to tax. Separately stated charges by a photocopy company for the reimbursement of witness fees which were paid to the recordholder are not subject to tax. Tax does not apply to separately stated fees, made by a person who makes or acquires records for another for advancing payment of statutory witness fees. Such fees, commonly identified as "check charges", are made to cover the cost of providing the check, advancing moneys, and associated bookkeeping costs. When a witness fee is charged, the "check charge" will be regarded as part of the charge for a nontaxable service and not as a part of the charge made for the tangible personal property.

(3) PREPARATION OF SUBPOENA DUCES TECUM. The preparation and service of a subpoena duces tecum is a nontaxable service. The tax does not apply to separately stated charges made for the service even though the subpoena is served in connection with the performance of a contract to produce and deliver photocopies of records.

(4) TYPEWRITTEN TRANSCRIPTIONS AND INTERPRETATION OF MEDICAL RECORDS. The tax does not apply to a separately stated charge made for providing a typewritten transcription of a medical report or an interpretation of the contents of a medical record. However, the tax applies to the fair retail value of any photocopies produced for the customer in connection with the nontaxable service.

(c) PHOTO FINISHERS.

(1) PRINTS AND ENLARGEMENTS. Tax applies to charges for printing pictures or making enlargements from negatives or slides furnished by the customer.

Tax applies to sales to photo finishers of all tangible personal property used by them in printing pictures or making enlargements except property becoming an ingredient or component part of the prints, enlargements and other items sold by them.

(2) COLORING AND TINTING. Tax applies to charges for coloring and tinting new pictures.

Tax does not apply to sales of colors and tints to photo finishers for use by them in coloring and tinting new pictures.

(3) FILM PROCESSING.

(A) Negative Development of Customer Furnished Film. Tax does not apply to separately stated charges for the negative development of customer furnished film. Development of film by the reverse process method is not the negative development of film.

Tax applies to sales of chemicals for use in such negative development whether or not the chemicals become a component part of the negative.

(B) Other Film Processing. Tax applies to all film processing charges other than separately stated charges for the negative development of customer furnished film. For example, tax applies to charges for development of film by the reverse process method.

Tax applies to sales of chemicals for use in such film processing if the chemicals do not become a component part of the processed film transferred to customers. Tax does not apply to sales of chemicals which do become a component part of film sold to customers before use.

(d) X-RAY LABORATORIES. Producers of X-Ray films or photographs for the purpose of diagnosing medical or dental conditions of humans, excluding such films and photographs used only for cosmetic purposes, are the consumers of materials and supplies used in the production thereof. Thus, the tax applies to the sale of such materials and supplies to laboratories producing X-Ray films or photographs for the purpose of such diagnoses. Whether the laboratory is a "lay laboratory" or is operated by a physician, surgeon, dentist or hospital is

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immaterial. Producers of X-Ray films or photographs for any other purpose such as use for purely cosmetic purposes, diagnosis of medical or dental conditions of animals, inspection of metals, welds and similar purposes are retailers of the films or pictures and the tax applies to the gross receipts from the retail sale thereof. If, however, an X-Ray laboratory contracts to furnish an X-Ray inspection service, retaining title to and possession of the X-Ray or pictures produced, charges for the performance of such an inspection service are not subject to tax.

History: Effective June 1, 1951.

Amended July 18, 1951.

Amended November 3, 1969, applicable on and after November 10, 1969.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended November 14, 1974, effective December 22, 1974. In (a) added explanation of tax on sales of Photostatted records, revised (b) for clarity, and in (c) changed X-Ray producers of other than humans or animals from consumers to retailers.

Amended July 27, 1983, effective November 13, 1983. Revised subdivision (c) to delete reference to animals, added "or photographer" and added exclusion of use for "cosmetic purposes".

Amended March 6, 1985, effective June 2, 1985. Subdivision (a)(2) provides that when a hospital or other person or entity which furnishes copies of records in response to a written authorization presented to it by an attorney, or the attorney's representative, or a subpoena duces tecum served on it, the hospital or other person or entity is not subject to tax with respect to copying, witness, mileage, or other fees received by it pursuant to sections 1158 or 1568 of the Evidence Code. Subdivision (a)(2) also provides that fees for copies of records, when copies are provided through a copying service, remain nontaxable.

Amended August 1, 1991, effective August 27, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, which repealed the exemption from sales and use tax for the sale or use of photographs when possession, but not title of the photograph is transferred for the purpose of being reproduced one time only, in a newspaper regularly issued at average intervals not exceeding three months.

Amended June 26, 1997, effective October 4, 1997. Former subdivision (a)(1) is redesignated as subdivision (a), references to the terms "photostat producers" and "photostats" are replaced by "photocopiers" and "photocopies," respectively, and a cross-reference to new subdivision (b)(2) is added. Subdivision (a)(2) is deleted in its entirety and replaced with new subdivision (b).

Amended May 29, 2002, effective September 9, 2002. Subdivision (a)- Sentence "See Regulation 1540, *Advertising Agency and Commercial Artists*, for transfers of photographic images by commercial artists" added as second un-numbered paragraph.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.